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BILL ANALYSIS

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Senate Bills 901, 902, and 903 (as introduced 1-24-12)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 1-31-12

CONTENT

Senate Bill 903 would create the "Uniform Arbitration Act" to do the following:

- **Provide for the enforcement of an agreement to arbitrate.**
- **Govern arbitration proceedings, including the initiation and consolidation of proceedings.**
- **Authorize a court or arbitrator to order provisional remedies.**
- **Allow the parties to waive or vary a requirement of the Act, except as otherwise provided.**
- **Require a potential arbitrator to disclose facts that could affect his or her impartiality.**
- **Grant immunity from civil liability to an arbitrator, to the same extent as a judge acting in a judicial capacity.**
- **Specify an arbitrator's powers and duties.**
- **Outline an arbitrator's responsibilities in making an award.**
- **Specify conditions under which a court could vacate, or modify or correct, an arbitration award.**
- **Identify matters that could be appealed, and require an appeal to be taken as from an order or judgment in a civil action.**

The proposed Act would govern an agreement to arbitrate made on or after the bill's effective date, and an agreement made before that date if all parties agreed.

Senate Bill 902 would amend the Revised Judicature Act (RJA) to limit the application of Chapter 50 (Arbitrations) of the RJA and repeal Chapter 50 on July 1, 2012.

Senate Bill 901 would amend the Condominium Act to require that arbitration proceedings in disputes under the Act be conducted under the proposed Uniform Arbitration Act.

Senate Bill 903 would take effect on July 1, 2012, and is tie-barred to Senate Bills 901 and 902. Those bills are tie-barred to Senate Bill 903.

Senate Bill 903

Scope of Act

The proposed Uniform Arbitration Act would govern an agreement to arbitrate made on or after the bill's effective date. It also would govern an agreement to arbitrate made before that date, if all parties to the agreement or to that arbitration proceeding so agreed in a record. On or after July 1, 2012, the Act would govern an agreement to arbitrate whenever made. Except as otherwise provided, a party to an agreement or proceeding could waive, or the parties could vary the effect of, the Act's requirements to the extent permitted by law.

In applying and construing the Act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

The Act would not affect an action or proceeding commenced or right accrued before it took effect.

Notice

Except as otherwise provided, a person would give notice to another person by taking action that was reasonably necessary to inform the other person in ordinary course, regardless of whether the other person acquired knowledge of the notice. A person would have notice if he or she had knowledge of the notice or had received notice. A person would receive notice when it came to his or her attention or the notice was delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Agreement to Arbitrate

An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement would be valid, enforceable, and irrevocable except on a ground that existed at law or in equity for the revocation of a contract. ("Record" would mean information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.)

The court would have to decide whether an agreement to arbitrate existed or a controversy were subject to an agreement to arbitrate.

Upon a person's motion showing an agreement to arbitrate and alleging another person's refusal to arbitrate, the court would have to do both of the following:

-- Order the parties to arbitrate, if the refusing party did not appear or did not oppose the motion.
-- Proceed summarily to decide the issue and order the parties to arbitrate, if the refusing party opposed the motion, unless the court found that there was no enforceable agreement to arbitrate.

If the court found that there was no enforceable agreement, it could not order the parties to arbitrate. The court could not refuse to order arbitration because the claim subject to arbitration lacked merit or grounds for the claim had not been established.

If a party moved the court to order arbitration, or if the court ordered arbitration, the court would have to stay any judicial proceeding that involved a claim alleged or actually subject to arbitration.

Unless a civil action already were pending between the parties, a complaint regarding the agreement to arbitrate would have to be filed and served as in other civil actions.

Provisional Remedies

Before appointment of an arbitrator, the court could enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator was appointed and was authorized and able to act, both of the following would apply:

-- The arbitrator could issue orders for provisional remedies, as he or she found necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy.
-- A party to an arbitration proceeding could move the court for a provisional remedy only if the matter were urgent and the arbitrator could not act in a timely manner or provide an adequate remedy.

Arbitration Proceedings

Initiation of Proceedings. A person would initiate an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner or, in the absence of an agreement, by certified or registered mail or by service as authorized for the commencement of a civil action. Unless a person objected for lack or insufficiency of notice, the person would waive any such objection by appearing at the hearing.

Consolidation of Proceedings. Unless an agreement to arbitrate prohibited consolidation, the court could consolidate separate arbitration proceedings as to all or some of the claims, if all of the following applied:

-- There were separate agreements to arbitrate or separate arbitration proceedings between the same people, or one of them was a party to a separate agreement with a third person.
-- The claims subject to the agreements to arbitrate arose in substantial part from the same transaction or series of related transactions.
-- The existence of a common issue of law or fact created the possibility of conflicting decisions in the separate arbitration proceedings.
-- Prejudice resulting from a failure to consolidate was not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

Appointment of Arbitrator. If the parties agreed on a method for appointing an arbitrator, that method would have to be followed unless it failed. If the parties had not agreed, the agreed-upon method failed, or an appointed arbitrator failed to act and a successor had not been appointed, the court would have to appoint the arbitrator. An individual who had a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party, could not serve as an arbitrator.

Before accepting appointment, an individual who was requested to serve as an arbitrator would have to disclose to all parties and to any other arbitrators any known facts that a reasonable person would consider likely to affect the arbitrator's impartiality. If an arbitrator disclosed a fact required to be disclosed and a party timely objected to the appointment or continued service of the arbitrator, the objection could be a ground for vacating an award made by that arbitrator. If an arbitrator did not disclose a fact required to be disclosed, the court could vacate an award upon a timely objection by a party.

Arbitrators & Hearings

If there were more than one arbitrator, the powers of an arbitrator would have to be exercised by a majority of them, but all would have to conduct the hearing.

An arbitrator, or an arbitration organization acting in that capacity, would be immune from civil liability to the same extent as a judge acting in a judicial capacity.

In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization would not be competent to testify and could not be required to produce records regarding arbitration proceedings, to the same extent as a judge acting in a judicial capacity. This would not apply, however, to the extent necessary to determine the claim of an arbitrator or organization against a party to the arbitration proceeding or to a hearing on a motion to vacate an award if the moving party established that a ground for vacating the award existed.

An arbitrator could conduct an arbitration in the manner that he or she considered appropriate for a fair and expeditious disposition of the proceeding. The arbitrator's authority would include the power to hold conferences with the parties before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

An arbitrator could decide a request for summary disposition if all interested parties agreed or, on the request of one party, if that party gave notice to all other parties and they had reasonable opportunity to respond.

If an arbitrator ordered a hearing, he or she would have to set a time and place and give notice of the hearing not less than five days before it began. On a party's request and for good cause, or on the arbitrator's own initiative, the arbitrator could adjourn the hearing as necessary but could not postpone it to a time later than that fixed by the agreement to arbitrate unless the parties consented to a later date.

If an arbitrator ceased or were unable to act during the proceeding, a replacement arbitrator would have to be appointed to continue the proceeding and to resolve the controversy.

A party to an arbitration proceeding could be represented by a lawyer.

An arbitrator could issue a subpoena for the attendance of a witness and for the production of records and other evidence,

and could administer oaths. An arbitrator could permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who could not be subpoenaed or was unable to attend a hearing.

An arbitrator could permit or limit discovery. If an arbitrator allowed discovery, he or she could order a party to comply with the discovery-related orders, issue subpoenas for the attendance of witnesses and the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action.

An arbitrator could issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action.

Arbitration Awards

If an arbitrator made a preaward ruling in favor of a party, the party could request the arbitrator to incorporate the ruling into an award. A prevailing party could move the court for an expedited order to confirm the award, in which case the court would have to decide the motion summarily. The court would have to issue an order to confirm the award unless it vacated, modified, or corrected the award.

An arbitrator would have to make a record of an award and give each party a copy. On motion by a party, the arbitrator could modify or correct an award based on circumstances specified in the proposed Act.

An arbitrator could award punitive damages or other exemplary relief if that award were authorized by law in a civil action involving the same claim, and the evidence produced at the hearing justified the award under the legal standards applicable to the claim. An arbitrator could award reasonable attorney fees and other reasonable expense, if that award were authorized by law in a civil action involving the same claim or by agreement of the parties. The arbitrator could order other remedies that he or she considered just and appropriate. An arbitrator's expenses and fees, and other expenses, would have to be paid as provided in the award.

On motion to the court by a party to an arbitration proceeding, the court would have to vacate an arbitration award if certain conditions existed. The court could order a rehearing, unless the award were vacated because there was no agreement to arbitrate. If the court denied a motion to vacate an award, it would have to confirm the award unless a motion to modify or correct the award were pending.

The court also could modify or correct an arbitration award, under certain circumstances.

On granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court would have to enter a judgment that conformed with the order. The judgment could be recorded and enforced as any other judgment in a civil action. The court could allow reasonable costs of the motion and subsequent judicial proceedings. On request of a prevailing party to a contested judicial proceeding, the court also could add reasonable attorney fees and other reasonable expenses of litigation, incurred in a judicial proceeding after the award was made, to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

A Michigan court that had jurisdiction over the controversy and the parties could enforce an agreement to arbitrate. An agreement to arbitrate that provided for arbitration in Michigan would confer exclusive jurisdiction on the court to enter judgment on an award under the proposed Act.

Appeals

Except as provided below, a request for judicial relief under the proposed Act would have to be made by motion to the court and heard in the manner provided by court rule for making and hearing motions.

An appeal could be taken from any of the following:

-- An order denying a motion to compel arbitration.

-- An order granting a motion to stay arbitration.
-- An order confirming or denying confirmation of an award.
-- An order modifying or correcting an award.
-- An order vacating an award without directing a rehearing.
-- A final judgment entered under the proposed Act.

The appeal would have to be taken as from an order or a judgment in a civil action.

Senate Bill 902

The bill states that Chapter 50 of the RJA would only govern and apply to an agreement to arbitrate that was one of the following circumstances:

-- Made before the effective date of the proposed Uniform Arbitration Act.
-- Made after that date, but before the date on which Chapter 50 was repealed, if the agreement to arbitrate expressly provided that Chapter 50 would govern.

Chapter 50 would not apply to an agreement to arbitrate governed by the proposed Uniform Arbitration Act.

Chapter 50 would be repealed on July 1, 2012.

Under the RJA, Chapter 50B provides for and governs arbitration in domestic relations matters, and controls if there is a conflict between Chapter 50B and Chapter 50. The bill specifies that Chapter 50B would control if there were a conflict between it and the proposed Uniform Arbitration Act.

Senate Bill 901

The Condominium Act requires a developer, at the exclusive option of a purchaser, co-owner, or person occupying a restricted unit, to execute a contract to settle by arbitration any claim that might be the subject of a civil action against the developer involving an amount less than $2,500 and arising out of or relating to a purchase agreement, condominium unit, or project. Also, at the exclusive option of the association of co-owners, a developer must execute a contract to settle by arbitration any claim that might be the subject of a civil action against the developer arising out of or relating to the common elements of a condominium project and involving an amount of $10,000 or less.

A contract to settle by arbitration must specify that the arbitration will be conducted by the Arbitration Association. The arbitrator or arbitrators must be appointed as provided by reasonable rules of the Arbitration Association. An arbitration award is binding on the parties to the arbitration.

Arbitration under the Act must proceed according to Chapter 50 of the RJA, and may be supplemented by reasonable rules of the Arbitration Association. Under the bill, instead, arbitration under the Condominium Act would have to proceed according to the proposed Uniform Arbitration Act. The procedures of that Act could be supplemented by reasonable rules of the Arbitration Association.

MCL 559.244 (S.B. 901)
600.5070 et al. (S.B. 902)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate, but likely minimal, fiscal impact on State and local government. To the extent that the bills diverted claims from traditional trial court dispute resolution, there could be long-run cost savings associated with reduced caseloads. A public body also could become a party to arbitration, which would have an indeterminate effect on public expenses; there is potential for modest savings in legal costs, but this would vary based on circumstances unique to each dispute.

Fiscal Analyst: Dan O'Connor

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